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Great Lakes Welding & Boiler Company and International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forger and Helpers, Local Lodge No. 744. Case 8-CA-27500

April 22, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS COHEN
AND FOX

Upon a charge filed by the Union on June 21, 1995, the General Counsel of the National Labor Relations Board issued a complaint on August 31, 1995, against Great Lakes Welding & Boiler Company, the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On March 25, 1996, the General Counsel filed a Motion for Summary Judgment with the Board. On March 28, 1996, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated February 27, 1996, notified the Respondent that unless an answer were received by March 5, 1996, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, an Ohio corporation with an office and place of business in Cleveland, Ohio, has been engaged in the installation, repair, and servicing of industrial boilers. Annually, the Respondent purchases and receives at its Cleveland, Ohio facility goods valued in excess of \$50,000 directly from points outside the State of Ohio. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All production and maintenance employees, excluding all office clerical employees and professional employees, guards and supervisors as defined in the Act.

Since at least 1992 and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective by its terms from May 1, 1992, to April 30, 1994, and, by its terms, automatically renewed itself absent appropriate notice from either party. At all times since 1992, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

From about December 21, 1994, and continuously thereafter, the Respondent has failed to remit all fringe benefit contributions due pursuant to the contract, including those contributions due the Boilermakers-Blacksmith National Pension Trust and the Boilermakers National Annuity Trust. These subjects relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining. The Respondent engaged in this conduct without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain col-

lectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing, since about December 21, 1994, to remit all fringe benefit contributions due pursuant to the contract, including those contributions due the Boilermakers-Blacksmith National Pension Trust and the Boilermakers National Annuity Trust, we shall order the Respondent to make whole its unit employees by making all such delinquent contributions, including any additional amounts due the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enf. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).¹

ORDER

The National Labor Relations Board orders that the Respondent, Great Lakes Welding & Boiler Company, Cleveland, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Unilaterally failing to remit all fringe benefit contributions due pursuant to the collective-bargaining agreement with the Union, including those contributions due the Boilermakers-Blacksmith National Pension Trust and the Boilermakers National Annuity Trust on behalf of the following unit employees:

All production and maintenance employees, excluding all office clerical employees and profes-

sional employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make all contractually required fringe benefit contributions, including those contributions due the Boilermakers-Blacksmith National Pension Trust and the Boilermakers National Annuity Trust, and make the unit employees whole for any loss of benefits or expenses resulting from its unlawful failure to do so since December 21, 1994, as set forth in the remedy section of this decision.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at its facility in Cleveland, Ohio, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 8, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. April 22, 1996

William B. Gould IV, Chairman

Charles I. Cohen, Member

Sarah M. Fox, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

¹ To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the Respondent's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT unilaterally fail to remit all fringe benefit contributions due pursuant to the collective-bargaining agreement with the Union, including those contributions due the Boilermakers-Blacksmith National Pension Trust and the Boilermakers National Annuity Trust on behalf of the following unit employees:

All production and maintenance employees, excluding all office clerical employees and professional employees, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make all contractually required fringe benefit contributions, including those contributions due the Boilermakers-Blacksmith National Pension Trust and the Boilermakers National Annuity Trust, and WE WILL make the unit employees whole for any loss of benefits or expenses resulting from our unlawful failure to do so since December 21, 1994.

GREAT LAKES WELDING & BOILER
COMPANY